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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Stefanie Ontiveros,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-22-00670-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff Stefanie Ontiveros's appeal from the
16 Commissioner of the Social Security Administration's ("SSA") denial of her father's
17 application for Social Security Disability Insurance ("SSDI"). (Doc. 1). The appeal is fully
18 briefed, (Doc. 12, Doc. 14, Doc. 17). The Court will now rule.

19 **I. BACKGROUND**

20 The issues on appeal are whether the Administrative Law Judge ("ALJ") committed
21 harmful error by rejecting Plaintiff's testimony about Claimant's symptoms, and whether
22 the ALJ had substantial evidence for his Residual Functional Capacity ("RFC")
23 determination. (Doc. 8-3).

24 **a. Factual Overview**

25 Francisco Hernandez ("Claimant"), filed for SSDI in March of 2018. (*See id.* at 12).
26 He asserted that his disability began February 1, 2012, when he was initially hospitalized
27 for a heart attack. (Doc. 12 at 2–3). His claim stemmed out of the heart attack and resulting
28 coronary and heart related conditions. (*See id.* at 3). He was last insured for SSDI benefits

1 on December 31, 2012. (*Id.* at 2). His claim was initially denied on May 31, 2018. (Doc.
 2 8-3 at 12). After requesting, but before receiving, a hearing before an ALJ, Claimant passed
 3 away. (*Id.*). In February of 2021, after a telephonic hearing at which Plaintiff, Claimant's
 4 daughter, testified, the ALJ denied the claim. (Doc. 12 at 2). The SSA appeals Council later
 5 denied Plaintiff's request for a review of that decision and adopted the ALJ's decision as
 6 the final decision of the Commissioner. (Doc. 8-3 at 9). Plaintiff now appeals the ALJ's
 7 decision.

8 **b. The SSA's Five-Step Evaluation Process**

9 To qualify for social security benefits, a claimant must show she "is under a
 10 disability." 42 U.S.C. § 423(a)(1)(E). A claimant is disabled if she suffers from a medically
 11 determinable physical or mental impairment that prevents her from engaging "in any
 12 substantial gainful activity." *Id.* § 423(d)(1)–(2). The SSA has created a five-step process
 13 for an ALJ to determine whether the claimant is disabled. *See* 20 C.F.R. § 404.1520(a)(1).
 14 Each step is potentially dispositive. *See id.* § 404.1520(a)(4).

15 At the first step, the ALJ determines whether the claimant is "doing substantial
 16 gainful activity." *Id.* § 404.1520(a)(4)(i). If so, the claimant is not disabled. *Id.* Substantial
 17 gainful activity is work activity that is both "substantial," involving "significant physical
 18 or mental activities," and "gainful," done "for pay or profit." *Id.* § 404.1572(a)–(b).

19 At the second step, the ALJ considers the medical severity of the claimant's
 20 impairments. *Id.* § 404.1520(a)(4)(ii). If the claimant does not have "a severe medically
 21 determinable physical or mental impairment," the claimant is not disabled. *Id.* A "severe
 22 impairment" is one which "significantly limits [the claimant's] physical or mental ability
 23 to do basic work activities." *Id.* § 404.1520(c). Basic work activities are "the abilities and
 24 aptitudes necessary to do most jobs." *Id.* § 404.1522(b).

25 At the third step, the ALJ determines whether the claimant's impairment or
 26 combination of impairments "meets or equals" an impairment listed in Appendix 1 to
 27 Subpart P of 20 C.F.R. Part 404. *Id.* § 404.1520(a)(4)(iii). If so, the claimant is disabled.
 28 *Id.* If not, before proceeding to step four, the ALJ must assess the claimant's "residual

1 functional capacity” (“RFC”). *Id.* § 404.1520(a)(4). The RFC represents the most a
2 claimant “can still do despite [her] limitations.” *Id.* § 404.1545(a)(1). In assessing the
3 claimant’s RFC, the ALJ will consider the claimant’s “impairment(s), and any related
4 symptoms, such as pain, [that] may cause physical and mental limitations that affect what
5 [the claimant] can do in a work setting.” *Id.*

6 At the fourth step, the ALJ uses the RFC to determine whether the claimant can still
7 perform her “past relevant work.” *Id.* § 404.1520(a)(4)(iv). The ALJ compares the
8 claimant’s RFC with the physical and mental demands of the claimant’s past relevant work.
9 *Id.* § 404.1520(f). If the claimant can still perform her past relevant work, the ALJ will find
10 that the claimant is not disabled. *Id.* § 404.1520(a)(4)(iv).

11 At the fifth and final step, the ALJ determines whether—considering the claimant’s
12 RFC, age, education, and work experience—she “can make an adjustment to other work.”
13 *Id.* § 404.1520(a)(4)(v). If the ALJ finds that the claimant can make an adjustment to other
14 work, then the claimant is not disabled. *Id.* If the ALJ finds that the claimant cannot make
15 an adjustment to other work, then the claimant is disabled. *Id.*

16 **c. The ALJ’s Application of the Factors**

17 Applying the first step, the ALJ found that Claimant had not engaged in substantial
18 gainful activity between the time he was first admitted to the hospital following his heart
19 attack on February 1, 2012, and his date last insured of December 31, 2012. (Doc. 8-3 at
20 15).

21 At the second step, the ALJ found that Claimant had three severe impairments under
22 20 CFR 404.1520(c): coronary artery disease, congestive heart failure, and status-post
23 myocardial infarction. (*Id.*). The ALJ also found that Claimant had a number of other non-
24 severe impairments including diabetes mellitus, hypertension, and hyperlipidemia. (*Id.*).
25 These impairments were not severe, the ALJ found, because the claimant had done well,
26 and there was no linkage between these impairments “and any work-related limitation prior
27 to the date last insured.” (*Id.*).

28 At the third step, the ALJ found that Claimant did not have an “impairment or

1 combination of impairments that met or medically equaled the severity of one of the listed
 2 impairments” (*Id.*). He found no evidence that any single impairment, or combination
 3 of impairments were severe enough to meet any of the listed impairments. (*Id.*). The ALJ
 4 then looked at the record, all of claimant’s impairments, and prior medical opinions and
 5 administrative medical findings. (*See id.* at 16). He found, after considering Plaintiff’s
 6 testimony regarding Claimant’s symptoms, that Plaintiff’s testimony was “not entirely
 7 consistent with the medical evidence and other evidence in the record” (*Id.* at 17). The
 8 ALJ found that although Claimant’s severe impairments did cause “some limitations[,]”
 9 the majority of the evidence supported the conclusion that Claimant could perform a
 10 “reduced range of light exertional level work” (*Id.* at 19).

11 Finally, at the fourth step, the ALJ found that Claimant’s RFC would have allowed
 12 him to perform his past relevant work as a drilling superintendent. (*Id.* at 20). Because of
 13 this finding, the ALJ did not assess the fifth step. (*Id.* at 20–21). The ALJ ultimately
 14 determined that Claimant was not disabled for purposes of SSDI from the period of his
 15 alleged onset date through the date last insured. (*Id.* at 21).

16 II. LEGAL STANDARD

17 This Court may not overturn the ALJ’s denial of disability benefits absent legal error
 18 or a lack of substantial evidence. *Luther v. Berryhill*, 891 F.3d 872, 875 (9th Cir. 2018).
 19 Substantial evidence means “more than a scintilla ... but less than a preponderance.”
 20 *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996) (internal quotations omitted). It is
 21 “such relevant evidence as a reasonable mind might accept as adequate to support a
 22 conclusion.” *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017) (quoting *Desrosiers v.*
 23 *Sec’y of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988)). Under this standard,
 24 courts look at “an existing administrative record and ask[] whether it contains sufficient
 25 evidence to support the [ALJ’s] ... factual determinations.” *Biestek v. Berryhill*, 139 S.Ct.
 26 1148, 1154 (2019). This Court “must consider the entire record as a whole, weighing both
 27 the evidence that supports and the evidence that detracts from the [ALJ’s] conclusion, and
 28 may not affirm simply by isolating a specific quantum of supporting evidence.” *Id.* (quoting

1 *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014)). The ALJ, not this Court, draws
2 inferences, resolves conflicts in medical testimony, and determines credibility, however.
3 *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Gallant v. Heckler*, 753 F.2d
4 1450, 1453 (9th Cir. 1984). Thus, this Court must affirm even when “the evidence admits
5 of more than one rational interpretation.” *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir.
6 1984). The Court “review[s] only the reasons provided by the ALJ in the disability
7 determination and may not affirm the ALJ on a ground upon which he did not rely.”
8 *Garrison*, 759 F.3d at 1010.

9 When specifically assessing SSDI claims, the ALJ’s inquiry is limited to assessing
10 whether the claimant had a disability in the period between the alleged onset date and the
11 date last insured. The main source of evidence for this is medical records and testimony
12 from or about this period. Evidence, specifically testimony, about the claimant from before
13 or after this period can be looked to, but only for the limited purpose of assessing whether
14 claimant was under a disability before the date last insured. As the Ninth Circuit has
15 explained, evidence relating to the patient’s condition after the date last insured is only
16 “relevant to an evaluation of the pre-expiration condition.” *Smith v. Bowen*, 849 F.2d 1222,
17 1225 (9th Cir. 1988); *Petty v. Astrue*, 550 F.Supp.2d 1089, 1097 (9th Cir. 2008); *See also*,
18 *Fyfle v. Finch*, 311 F.Supp. 552, 557 (W.D. Pa. 1970). Furthermore, any evidence that
19 shows a deterioration in claimant’s condition after the date last insured “is, of course,
20 irrelevant.” *Waters v. Gardner*, 452 F.2d 855, 858 (9th Cir. 1971). Thus, an ALJ need not
21 consider evidence showing that a claimant became disabled after the eligible period.

22 In many cases, the ALJ is required to make credibility determinations relating to a
23 claimant’s testimony or a lay witness’s testimony. The ALJ must consider all witness
24 testimony offered “concerning a claimant’s ability to work.” *Stout v. Comm’r of Soc. Sec.*
25 *Admin*, 454 F.3d 1050, 1053 (9th Cir. 2006). This is true not just of claimant testimony
26 about pain and symptoms, but also of lay witness testimony about the same. *Molina v.*
27 *Astrue*, 674 F.3d 1104, 1114 (9th Cir. 2012). For claimant testimony, the ALJ must engage
28 in a two-part inquiry. First, he must see whether there is “objective medical evidence of an

1 underlying impairment which could reasonably be expected to produce the pain or other
2 symptoms alleged[.]” *See Smolen*, 80 F.3d at 1281. Second, the ALJ must evaluate
3 evidence relating to the intensity, persistence, and limiting effects of the alleged symptoms.
4 *See* 20 C.F.R. § 404.1529. Notably, the claimant does not need to produce “objective
5 medical evidence of the pain” itself or of the “causal relationship between the medically
6 determinable impairment and the symptom.” *Smolen*, 80 F.3d at 1282. Furthermore, the
7 claimant does not need to show that the alleged impairment “could reasonably be expected
8 to cause the severity of the symptom,” only that it could reasonably “have caused some
9 degree of the symptom.” *Id.* If an ALJ believes that this testimony should be rejected for
10 lack of credibility, he must give “specific, clear and convincing reasons” for discounting
11 it. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). The standard is far less
12 demanding for lay witness testimony, however. To reject lay witness pain and symptom
13 testimony, the ALJ need only provide “germane reasons[.]” *Leon v. Berryhill*, 880 F.3d
14 1041, 1046 (9th Cir. 2017). One such reason is that the lay witness testimony “conflicts
15 with medical evidence.” *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). Thus, the ALJ
16 does not need to provide as robust reasoning in this context as he would have to if he were
17 rejecting claimant testimony.

18 **III. DISCUSSION**

19 Plaintiff claims that the ALJ erred in his RFC analysis by rejecting her testimony
20 about Claimant’s symptoms. (*See* Doc. 12 at 9). She asserts that the ALJ failed to give
21 “specific clear, and convincing reasons” for doing so. (*Id.*). Plaintiff also claims that the
22 RFC was flawed because the ALJ did not base his assessment of Claimant’s work
23 capacities on substantial evidence in the record as a whole. (*Id.* at 14). She additionally
24 contends that the ALJ failed to look to evidence of Claimant’s symptoms from after the
25 date last insured. (Doc. 17 at 5, 8–9).

26 **a. Credibility of Plaintiff Testimony**

27 Plaintiff asserts that her testimony should be judged under the “specific, clear, and
28 convincing” standard for claimant testimony. Although she has been substituted for the

1 original party in the case, this Court finds that she is still a lay witness. Thus, the “germane
2 reasons” standard will be applied. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir.
3 2005). Although Plaintiff is legally standing in the shoes of the original claimant, for
4 purposes of analyzing symptom testimony she should not be treated as a “replacement of
5 the claimant’s position and/or perception ...” as she contends. (*See* Doc. 17 at 4). When the
6 heightened standard for rejecting symptom testimony was first articulated, it was meant to
7 account for the individualized experiences of pain and symptoms that each person
8 experiences. *See Varney v. Sec’y of Health and Human Servs.*, 846 F.2d 581, 584 (9th Cir.
9 1988). As the Court in *Varney* stated, “we have recognized that pain is a highly
10 idiosyncratic phenomenon, varying according to the pain threshold and stamina of the
11 individual victim.” *Id.* (internal quotations omitted). The threshold for rejection of
12 symptom testimony given by the claimant is high to ensure that the court takes into account
13 the individualized experiences of symptoms. *See Brown-Hunter v. Colvin*, 806 F.3d 487,
14 493 (9th Cir. 2015) (noting that “[a] finding that a claimant’s testimony is not credible must
15 be sufficiently specific to allow a reviewing court to conclude the adjudicator rejected the
16 claimant’s testimony on permissible grounds and did not arbitrarily discredit a claimant’s
17 testimony ...”). It would not make sense to apply this heightened standard to Plaintiff’s
18 testimony. Plaintiff might have seen and potentially understood the unique aspects of the
19 pain and symptoms the original claimant was experiencing, but she did not experience them
20 herself. Consequently, there is no reason for the higher standard to apply because there is
21 no worry that the ALJ arbitrarily rejected testimony that only the person experiencing the
22 pain and symptoms could give. Plaintiff should, therefore, be treated as a third party and
23 her testimony should only be subject to the germane reasons standard.

24 The ALJ’s rejection of Plaintiff’s symptom testimony easily meets this standard.
25 The ALJ found that Plaintiff’s testimony regarding her father’s symptoms was “not entirely
26 consistent with the medical evidence and other evidence in the record” (Doc. 8-3 at 17).
27 The ALJ noted that after the initial treatment for his heart condition, Claimant had a regular
28 heart rate and rhythm, his heart sounds were within normal limits, the aorta was not

1 enlarged, no bruit was heard, his gait was normal, and that a number of other tests showed
2 normal results. (*See id.*). Thus, the ALJ concluded, there was no indication that Claimant
3 experienced any limitations before the date last insured like those described by Plaintiff.
4 (*See id.*). The ALJ then pointed out that at a follow up visit, Claimant again had normal
5 results and had no major issues. (*See id.*). The results from this visit were consistent with
6 a residual functional capacity indicating that claimant could perform light work. (*See id.*).
7 Furthermore, Claimant had normal results, the ALJ found, across a number of follow up
8 appointments. (*See id.* at 18). After a three-year gap in doctor visits, Claimant was again
9 found to be functioning normally, according to the ALJ. (*See id.*). The ALJ also noted that
10 Claimant was working construction and riding his bike routinely. (*See id.*). Given this
11 medical and daily activity evidence, the ALJ concluded that Plaintiff’s testimony was “not
12 fully consistent with the objective evidence.” (*See id.*). Furthermore, the ALJ added that
13 the evidence indicating that Claimant “failed to follow treatment recommendations” and
14 was “non-compliant with medication and office visits” shows “a possible unwillingness to
15 do that which is necessary to improve his condition.” (*See id.* at 18–19). The evidence cited
16 by the ALJ for rejecting Plaintiff’s testimony meets and exceeds the “germane reasons”
17 standard. Thus, this Court finds that the ALJ did not commit error in rejecting Plaintiff’s
18 symptom testimony.

19 **b. Residual Functional Capacity Analysis**

20 Finally, Plaintiff asserts that the ALJ erred in his RFC analysis because he offered
21 no evidence for his finding that Claimant could perform work at the light exertional level.
22 (*See Doc. 12 at 14*). Plaintiff states that the ALJ “did not cite to specific medical records[,]”
23 and only found the agency nonexamining reviewer’s opinion partially persuasive. (*Id.*).
24 This, she contends, does not constitute “substantial evidence” to support the RFC finding.
25 (*See id.* at 14–15). This is a mischaracterization of the ALJ’s analysis, however. He cited
26 to numerous medical reports and reports of daily activities. (*See Doc. 8-3 at 16–20*). He
27 also credited the assessment of the agency doctor to support his RFC determination. (*See*
28 *id.*). Consequently, this Court finds that the ALJ did have substantial evidence for his RFC

1 finding.

2 As noted above, the ALJ cited to medical records from a number of office visits that
3 showed relatively normal heart function between the onset date and the date last insured.
4 (*See id.* at 17–18). He also pointed out the “significant gaps in claimant’s history of
5 treatment[,]” finding this to be evidence that Claimant “was not limited as alleged prior to
6 the date last insured.” (*See id.* at 18). Additionally, the ALJ noted that Claimant failed to
7 follow treatment recommendations, was non-compliant with medication, and did not attend
8 necessary office visits. (*See id.*). There was also evidence about Claimant’s daily activities,
9 which showed that he “worked construction and rode a bike on a routine basis.” (*See id.* at
10 18) (internal quotations omitted). Plaintiff asserts that Claimant did not in fact work
11 construction, but rather worked odd jobs as a handyman. (*See Doc. 12* at 13). Yet evidence
12 in the record indicated that he worked construction. (*See Doc. 8-10* at 6). Finally, the record
13 included medical testimony from a non-treating physician. The physician stated that
14 Claimant could engage in light work. The ALJ found this testimony “partially persuasive”
15 as it was consistent with the other evidence in the record. (*See Doc. 8-3* at 19). All of this
16 constitutes substantial evidence for the ALJ’s conclusion. *See Luther*, 891 F.3d at 875;
17 *Revels*, 874 F.3d at 654.

18 Plaintiff also contends that the ALJ erred because he was required to consider
19 testimony relating to Claimant’s symptoms after the date last insured. (*See Doc. 17* at 5, 8–
20 9). She contends that the ALJ must look at this evidence in order to adequately consider
21 the record as a whole. (*See id.* at 8). First, the ALJ did cite to evidence from office visits
22 from February 2015, and December 2016, which showed that Claimant was functioning
23 relatively normally. (*See Doc. 8-3* at 18). Second, and more importantly, the ALJ is not
24 required to cite to those records if they do not provide evidence that Claimant was under a
25 disability prior to the date last insured. *See Bowen*, 849 F.2d at 1225. Here Plaintiff states
26 that this evidence shows that Claimant “suffered severe cardiac impairments, including
27 consistently low ejection fractions” in the time period after the date last insured. (*See Doc.*
28 *17* at 9). Yet this is evidence that Claimant’s condition may have deteriorated after the date

1 last insured, or that he became disabled during this period. As the Ninth Circuit has noted,
2 this evidence is irrelevant to the question of whether Claimant was disabled during the
3 eligibility period. *See Gardner*, 452 F.2d at 858. Accordingly, this Court finds that the ALJ
4 did not err in failing to consider this evidence or in his overall RFC determination.

5 **IV. CONCLUSION**

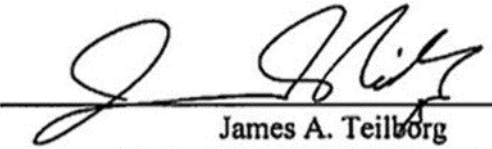
6 Accordingly,

7 **IT IS ORDERED** that the ALJ's decision is **AFFIRMED**.

8 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
9 accordingly.

10 Dated this 28th day of June, 2023.

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James A. Teilborg
Senior United States District Judge